

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:  
Employee – claimant

CASE NO.  
UD1044/2009

against  
Employer – respondent

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms D Donovan BL

Members: Mr F Moloney  
Mr P Trehy

heard this claim at Dublin on 18th May 2010

Representation:

\_\_\_\_\_  
Claimant(s): Mr Mick Brien  
Citizens Information Centre  
Luke Cullen House, Oakfield Industrial Estate, Clondalkin

Respondent(s): Peter Leonard BL  
Peninsula Business Services (Ireland) Limited  
Unit 3, Ground Floor, Block S, East Point Business Park, Dublin 3

The determination of the Tribunal was as follows:

Respondent's Case:

The branch manager of the respondent company gave evidence that the company is a wholesale steel supplier. Business was good in 2006 and 2007. 2008 began well as while demand was down somewhat the price of steel was strong, however the price of steel fell over the year and the company had to write down the value of its €7.1 million worth of stock.

The company had to look at where they could reduce costs. There was very little work in the warehouse and distribution side where the claimant worked as a supervisor. Management identified the claimant's position and a general operatives position for redundancy, which would save the company €100,000 immediately.

The claimant was written to by the operations manager on October 20<sup>th</sup> 2008 to explain the situation. He was invited to a meeting on October 24<sup>th</sup> 2008. The claimant suggested making the crane driver redundant and he would do his job, but he wanted the same pay and the crane driver was also being made redundant anyway.

The decision to dismiss the claimant was made for purely financial reasons and had nothing to do with either the claimant making a bullying allegation against him the Christmas before, or his refusal to sign a contract of employment a few weeks previously.

He had met the claimant with the managing director earlier in the year to discuss the bullying complaint and he and the claimant had shook hands. He believed that the situation had been resolved.

The contracts of employment had come about as the company had been made aware that they were required and they had issued a contract to all staff a few weeks prior to having to make redundancies.

During cross-examination the branch manager stated that the supervisor the claimant trained in for another depot in Jobstown was on a much lower salary than the claimant and was there to cover sick leave. He was made redundant in June 2009 when that depot was closed down.

The manager of the Irish operations, who is based in the UK, heard the claimant's appeal. The original cost saving plan was devised in Dublin and submitted to the board in the UK.

The operations manager gave evidence that the decision regarding who should be made redundant was made on purely financial grounds. He assumed some of the claimant's duties after he finished.

During cross-examination the witness contended that he had not been involved in the investigation into the claimant's bullying allegations in January 2008. He denied that he had assumed a number of the claimant's duties while he was still employed.

The supervisor that the claimant trained in for Jobstown reported to the claimant. He was based in Jobstown while the claimant was based in Ballymount with responsibility for Jobstown as well.

#### Claimant Case:

The claimant contended that he was selected for redundancy because of the bullying allegation he had made against the branch manager and because he refused to sign the contract of employment.

He contended that in 2007 the operations manager had taken a number of duties off him and his total duties were reduced. He trained in the replacement supervisor, who was a friend of the branch manager, for the Jobstown depot.

He made his bullying complaint due to his reduced duties and having received verbal abuse. He met the Irish manager, but he never got a report in regard to his complaint.

He refused to sign the contract of employment because he believed it would mean he would be made to work in the UK.

He believed that the replacement supervisor should have been made redundant before him.

During cross-examination he accepted that redundancies were required in the company. He had expected them to happen. Everyone was given a contract of employment at the same time.

He contended that the replacement supervisor and a general operative in Jobstown could have been made redundant instead of him as their combined wages would equal his.

He agreed that he shook hands with the branch manager when they had met to discuss his bullying allegation.

The claimant gave evidence of his loss.

Determination:

The Tribunal finds that there was a redundancy situation and that the claimant was not unfairly selected. Accordingly the claim under Unfair Dismissals Acts, 1977 to 2007, is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)